

# Ocamba Suite (Online) Agreement

## Terms and Conditions

Go to the [Additional Terms](#) for services made available with the new accounts infrastructure

This Ocamba Suite (Online) Agreement (the "Agreement") is entered into by and between Del Systems d.o.o., with offices at Dragise Misovica 163B, 32000 Cacak, Serbia ("Del Systems") and the entity agreeing to these terms ("Customer"). This Agreement is effective as of the date you click the "I Accept" button below or, if applicable, the date the Agreement is countersigned (the "Effective Date"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or the applicable entity to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree on behalf of the party that you represent to this Agreement. If you don't have the legal authority to bind your employer or the applicable entity please do not click the "I Accept" button below (or, if applicable, do not sign this Agreement). This Agreement governs Customer's access to and use of the Services as ordered in the applicable Order Form.

## 1. Services

**1.1 Facilities and Data Transfer.** All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Del Systems stores and processes its own information of a similar type. As part of providing the Services, Del Systems may transfer, store and process Customer Data in the United States or any other country in which Del Systems or its agents maintain facilities. By using the Services, Customer consents to this transfer, processing and storage of Customer Data.

**1.2 New Features or Services.** Del Systems may make new applications, features or functionality for the Services available from time to time, the use of which may be contingent upon Customer's agreement to additional terms.

**1.3 Modifications.**

**(a) Changes to Services.** Del Systems may make commercially reasonable changes to the Services from time to time. If Del Systems makes a material change to the Core Services, Del Systems will inform Customer, by either sending an email to the Notification Email Address or alerting Customer through the Admin Console.

**(b) Changes to URL Terms.** Del Systems may make commercially reasonable changes to the URL Terms from time to time. If Del Systems makes a material change to the URL Terms, Del Systems will inform Customer by either sending an email to the Notification Email Address or alerting Customer through the Admin Console. Material changes to the URL Terms will become effective 30 days after the notice is given, except if the changes apply to new functionality in which case the changes will be effective immediately. If the change has a material adverse impact on Customer, and the change, is not a result of Del Systems complying with a court order or applicable law, Customer may notify Del Systems within thirty days after

being informed of the change that Customer does not agree with the change. If Customer notifies Del Systems as required, then Customer will remain governed by the terms in effect immediately prior to the change until the earlier of: (i) the end of the then-current Term or (ii) 12 months after Del Systems informs Customer of the change, unless the modification to the URL Terms is in response to a court order or to comply with applicable law. If the Agreement renews, it will do so under the updated URL Terms.

**(c) Discontinuance of Services.** Subject to Section 1.3(d), Del Systems can discontinue any Services or any portion or feature for any reason at any time without liability to Customer.

**(d) Deprecation Policy.** Del Systems will notify Customer if it intends to make a Significant Deprecation. Del Systems will use commercially reasonable efforts to continue to provide the Core Services without a Significant Deprecation for at least one year after that notification, unless (as Del Systems determines in its reasonable good faith judgment): (i) otherwise required by law or by contract (including if there is a change in applicable law or contract), or (ii) doing so could create a security risk or a substantial economic or technical burden. This policy is the "Deprecation Policy."

**1.4 Customer Domain Name.** Customer is responsible for obtaining and maintaining any rights necessary for Customer's and Del Systems's use of the Customer Domain Names under the Agreement. Del Systems or Reseller may verify that Customer owns or controls the Customer Domain Names. If Customer does not own, or control, the Customer Domain Names, then Del Systems will have no obligation to provide Customer with the Services.

**1.5 Service Specific Terms.** The Service Specific Terms are incorporated by this reference into the Agreement.

## 2. Customer Obligations

**2.1 Compliance.** Customer must ensure that all use of the Services by Customer and its End Users complies with this Agreement including the [Acceptable Use Policy](#).

**2.2 Additional Products.** Del Systems may make Additional Products available to Customer and its End Users in accordance with the applicable product-specific [Additional Product Terms](#). Except to the extent described in the [Additional Product Terms](#), Additional Products are not subject to or governed by this Agreement. Customer can enable or disable Additional Products and is not required to use Additional Products in order to use the Services.

**2.3 Customer Administration of the Services.** Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that Del Systems's responsibilities do not extend to the internal management or administration of the Services for Customer and that Del Systems is merely a data-processor.

**2.4 Administrator Access; End User Consent.**

**(a) Administrator Access.** Administrators will have the ability to access all Customer's End User Accounts, including the ability to access, monitor, use, modify, withhold, or disclose any data

available to End Users associated with their End User Accounts.

**(b) Reseller as Administrator.** If Customer orders Services via Reseller, Reseller may have Administrator access to Customer's Account and Customer's End User Accounts. As between Del Systems and Customer, Customer is solely responsible for: (i) any access by Reseller to Customer's Account or Customer's End User Accounts; and (ii) defining in the Reseller Agreement any rights or obligations as between Reseller and Customer with respect to the Services.

**(c) End User Consent.** Customer will obtain and maintain all required consents from End Users to allow: (i) Administrators to have the access described in this Agreement; and (ii) Del Systems's provision of the Services to Administrators and End Users.

**2.5 Unauthorized Use.** Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Customer will promptly notify Del Systems of any unauthorized use of, or access to, the Services of which it becomes aware.

**2.6 Restrictions on Use.** Unless Del Systems specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for High Risk Activities; (e) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws; (f) use or access the Services in a manner intended to avoid incurring Fees. Customer is solely responsible for any applicable compliance with HIPAA.

**2.7 Support.** Customer will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer's or End Users' use of the Services. Customer will use commercially reasonable efforts to resolve support issues before escalating them to Del Systems.

### 3. Billing and Payment

**3.1 Orders via Reseller.** If Customer orders the Services from Reseller: (a) any payments will be made directly to Reseller pursuant to the Reseller Agreement; (b) the remaining provisions in this Section 3 (Payment) will not apply; (c) Del Systems will provide to Reseller any refunds or credits that may be due in respect of Customer; and (d) any obligation on the part of Reseller to provide any such refunds or credits to Customer will depend on the terms of the Reseller Agreement.

**3.2 Billing.** Customer will pay all Fees for the Services. Del Systems's measurement tools will be used to determine Customer's usage of the Services. Customer may elect one of the following billing options, or from among other options offered by Del Systems, when placing its order for the Services. Del Systems may change its offering of billing options, including by limiting or ceasing to offer any billing option, upon thirty days written notice to Customer (which may be by email). Billing options may not be available to all customers. Customer may pay for the Services using the payment options listed in Section 3.3 below.

**(a) Monthly Plan.** If Customer selects this option, Customer will not be committed to purchase the Services for a pre-defined term, but will pay for the Services on a monthly basis. Del

Systems will bill Customer: (i) Fees based upon Customer's daily usage of the Services during the preceding month; and (ii) monthly in arrears for its use of the Services. Del Systems will provide Customer with the monthly rate for the Services when Customer orders the Services, and will use this rate to calculate the Fees, on a prorated basis, for Customer's daily usage during that month. Any partial day of Services usages will be rounded up to a full day of Services usage for the purposes of calculating Fees.

**(b) Annual Plan.** If Customer selects this option, Customer will be committed to purchasing the Services from Del Systems for an annual term. Del Systems will bill Customer according to the terms associated with Customer's elections on the Order Form.

**3.3 Payment.** All payments due are in U.S. dollars unless otherwise indicated on the Order Form or invoice.

**(a) Credit Card or Debit Card.** Fees for orders where Customer is paying with a credit card, debit card or other non-invoice form of payment, are due at the end of the month during which Customer received the Services. For credit cards, or debit cards, as applicable: (i) Del Systems will charge Customer for all applicable Fees when due and (ii) these Fees are considered delinquent thirty days after the end of the month during which Customer received the Services.

**(b) Invoices.** Payments for invoices are due thirty days after the invoice date, unless otherwise specified on the Order Form, and are considered delinquent after such date.

**(c) Other Forms of Payment.** Customer may change its payment method to those available within the Admin Console. Del Systems may enable other forms of payment by making them available in the Admin Console. These other forms of payment may be subject to additional terms which Customer may have to accept prior using the additional forms of payment.

**3.4 Delinquent Payments.** Delinquent payments may bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Del Systems in collecting such delinquent amounts, except where such delinquent amounts are due to Del Systems's billing inaccuracies.

**3.5 Purchase Orders.**

**(a) Required.** If Customer wants a Purchase Order number on its invoice, Customer will inform Del Systems and issue a Purchase Order to Del Systems. If Customer requires a Purchase Order, and fails to provide the Purchase Order to Del Systems, then Del Systems will not be obligated to provide the Services until the Purchase Order has been received by Del Systems. Any terms and conditions on a Purchase Order do not apply to this Agreement and are null and void.

**(b) Not Required.** If Customer does not require a Purchase Order number to be included on the invoice, Customer will provide Del Systems a waiver of the Purchase Order requirement, which may be an email to this effect. If Customer waives the Purchase Order requirement, then: (a) Del Systems will invoice Customer without a Purchase Order; and (b) Customer agrees to pay invoices without a Purchase Order.

**3.6 Taxes.** Customer is responsible for any Taxes, and Customer will pay Del Systems for the Services without any reduction for taxes. If Del Systems is obligated to collect or remit Taxes imposed on Customer, the Taxes will be invoiced to

Customer, unless Customer provides Del Systems with a timely and valid tax exemption certificate (or other documentation as required for the exemption) authorized by the appropriate taxing authority. In some jurisdictions the sales tax is due on the total purchase price at the time of sale and must be invoiced and collected at the time of the sale.

## 4. Technical Support Services

Del Systems will provide TSS to Customer during the Term in accordance with the TSS Guidelines subject to payment of support Fees, if applicable. Customer acknowledges and agrees that Reseller may disclose End User personal data to Del Systems as reasonably required in order for Reseller to handle any support issues that Customer may choose to escalate to or via Reseller.

## 5. Suspension

**5.1 Of End User Accounts by Del Systems.** If Del Systems becomes aware of an End User's violation of the Agreement, then Del Systems may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with Del Systems's request to Suspend an End User Account, then Del Systems may do so. The duration of any Suspension by Del Systems will be until the applicable End User has cured the breach which caused the Suspension.

**5.2 Emergency Security Issues.** Notwithstanding the foregoing, if there is an Emergency Security Issue, then Del Systems may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If Del Systems Suspends an End User Account for any reason without prior notice to Customer, at Customer's request, Del Systems will provide Customer the reason for the Suspension as soon as is reasonably possible.

**5.3 Suspension for Non-Payment.**

**(a) Automatic Suspension.** Customer will have thirty days to pay Del Systems delinquent Fees. If Customer does not pay Del Systems delinquent Fees within thirty days, Del Systems will automatically suspend Customer's use of the Services. The duration of this suspension will be until Customer pays Del Systems all outstanding Fees.

**(b) During Suspension.** If Customer is on a monthly billing plan, and Customer is suspended for non-payment, Del Systems will stop charging Customer monthly Fees during Customer's suspension for non-payment. If Customer has an annual commitment to Del Systems for the Services, Del Systems will continue to charge Customer monthly Fees during Customer's suspension for non-payment and Customer must pay all outstanding Fees in order to resume its use of the Services.

**(c) Termination After Suspension.** If Customer remains suspended for non-payment for more than sixty days, Del Systems may terminate Customer for cause pursuant to Section 11.

**5.4 Suspension to Comply with Laws.** Del Systems may at its sole discretion Suspend the provision of any Services at any time if required to comply with any applicable law.

## 6. Confidential Information

**6.1 Obligations.** Subject to Section 6.2 (Disclosure of Confidential Information the recipient will not disclose the discloser's Confidential Information, except to employees, Affiliates, agents, or professional advisors ("Delegates") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.

**6.2 Disclosure of Confidential Information.**

**(a) General.** Subject to Section 6.2(b), the recipient may disclose the discloser's Confidential Information (i) in accordance with a Legal Process or (ii) with the discloser's written consent.

**(b) Notification.** Before the recipient discloses the discloser's Confidential Information in accordance with a Legal Process, the recipient will use commercially reasonable efforts to promptly notify the discloser Del Systems will give notice via the Notification Email Address. The recipient does not need to provide notice before disclosure if the recipient is informed that (i) it is legally prohibited from giving notice or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury to any person.

**(c) Opposition.** Recipient will comply with the other party's reasonable requests opposing disclosure of its Confidential Information.

## 7. Intellectual Property Rights; Brand Features

**7.1 Intellectual Property Rights.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and the Application or Project (if applicable), and Del Systems owns all Intellectual Property Rights in the Services and Software.

**7.2 Display of Brand Features.** Del Systems may display only those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Services) within designated areas of the Service Pages. Customer may specify the nature of this use using the Admin Console. Del Systems may also display Del Systems Brand Features on the Service Pages to indicate that the Services are provided by Del Systems. Neither party may display or use the other party's Brand Features beyond what is allowed in this Agreement without the other party's prior written consent.

**7.3 Brand Features Limitation.** Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to this Agreement with written notice to the other and a reasonable period to stop the use.

## 8. Publicity

In connection with Customer's use of the Services, (a) Customer may state publicly that it is a Del Systems customer and display Ocamba Brand Features consistent with the Trademark Guidelines and (b) Del Systems may (i) orally state that Customer is a Del Systems customer and (ii) include Customer's name or Customer Brand Features in a list of Del Systems

customers in Del Systems's online or offline promotional materials. Neither party needs approval if it is using the other party's name or Brand Features in a manner that is substantially similar to a previously approved manner. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

## 9. Representations, Warranties and Disclaimers

**9.1 Representations and Warranties.** Each party represents that (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable. Del Systems warrants that it will provide the Services in accordance with the applicable SLA.

**9.2 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) NEITHER PARTY NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT; AND (B) NEITHER GOOGLE NOR ITS SUPPLIERS WARRANTS THAT OPERATION OF THE SOFTWARE OR THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE SERVICES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY SERVICES CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

## 10. Term

**10.1 Agreement Term.** This Agreement will remain in effect for the Term.

**10.2 Term and Purchases During Term.** Del Systems will provide the Services to Customer during the Term. Unless the parties agree otherwise in writing, End User Accounts purchased during any Term will have a prorated term ending on the last day of that Term.

**10.3 Renewal.**

**(a) With a Monthly Plan.** With a Monthly Plan Customer is not committed to purchase the Services for a pre-defined term. As a result, there is no renewal event for the Monthly Plan. Rather, Del Systems will continue billing Customer fees consistent with Section 3.1(a) above.

**(b) With an Annual Plan.** At the end of each Term, the Services will renew consistent with Customer's elections on the Order Form or Admin Console.

**(c) Generally.** Customer may alter the number of End User Accounts to be renewed by communicating the appropriate

number of accounts to be renewed to Del Systems via the Admin Console. Customer will continue to pay Del Systems the then-current Fees for each renewed End User Account unless Customer and Del Systems mutually agree otherwise. If one party does not want the Services to renew, then it will provide the other party written notice to this effect at least fifteen days prior to the end of the then current Term. This notice of non renewal will be effective upon the conclusion of the then current Term.

**10.4 Requesting End User Accounts.** Customer may request additional End User Accounts during a Term by: (i) contacting its designated Del Systems Account Manager or Reseller, as applicable; or (ii) ordering End User Accounts via the Admin Console.

**10.5 Revising Rates.** Del Systems may revise its rates for the following Term by providing Customer written notice (which may be by email) at least thirty days prior to the start of the following Term.

## 11. Termination

**11.1 Termination for Cause.** Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

**11.2 Effects of Termination.** If this Agreement terminates or expires, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in Section 11.2 and Section 14.12 (Survival)); (ii) Customer will not have access to, or the ability to export, the Customer Data after the effective date of termination or expiry of the Agreement; (iii) all Fees owed by Customer to Del Systems are immediately due; (iv) Customer will not have access to, or the ability to export, Customer Data after the effective date of termination or expiry of the Agreement and will be responsible for determining whether (and the extent to which) to use the functionality of the Services to delete Customer Data prior to such date; (v) Del Systems will delete Customer Data in accordance with the terms of the Agreement; and (vi) upon request each party will promptly use reasonable efforts to return or destroy any remaining Confidential Information of the other party. If a Customer on an annual plan terminates the Agreement prior to the conclusion of its annual plan, Del Systems will bill Customer, and Customer is responsible for paying Del Systems, for the remaining unpaid amount of Customer's annual commitment.

## 12. Defense and Indemnity

**12.1 Del Systems Indemnification Obligations.** Subject to Section (Conditions), Del Systems will defend Customer and any of its Affiliates participating under this Agreement ("Customer Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Customer Indemnified Parties' use in accordance with this Agreement of Del Systems's technology used to provide the Services (excluding any open source software) or of Del Systems's Brand Features infringes the third party's Intellectual Property Rights.

**12.2 Customer Indemnification Obligations.** Subject to Section (Conditions), Customer will defend Del Systems and its



Affiliates ("Del Systems Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from: (a) Customer Data, Customer Brand Features, and Application, Project and Instance (if applicable); (b) Customer's or an End User's use of the Services in violation of the Acceptable Use Policy.

**12.3 Exclusions.** This Section 12 will not apply to the extent the underlying allegation arises from: modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party; or combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party.

**12.4 Conditions.** Obligations under Sections (Del Systems Indemnification Obligations) and (Customer's Indemnification Obligations) are conditioned on the following:

(a) The indemnified party has promptly notified the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 12.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 12.1 or 12.2 (as applicable) will be reduced in proportion to the prejudice.

(b) The indemnified party tenders sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

**12.5 Remedies.**

(a) If Del Systems reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Del Systems may, at its sole option and expense: (i) procure the right for Customer to continue using the Services; (ii) modify the Services to make them non-infringing without materially reducing their functionality; or (iii) replace the Services with a non-infringing, functionally equivalent alternative.

(b) If Del Systems does not believe the remedies in Section 12.5(a) are commercially reasonable, then Del Systems may suspend or terminate Customer's use of the impacted Services.

**12.6 Sole Rights and Obligations.** Without affecting either party's termination rights, this Section 12 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights allegations and Third-Party Legal Proceedings.

## 13. Limitation of Liability

**13.1 Limitations.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 13.2 (EXCEPTIONS TO LIMITATIONS),

(a) NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: (i) THE OTHER PARTY'S LOST REVENUES (ii) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES

AT THE EFFECTIVE DATE); OR (iii) EXEMPLARY OR PUNITIVE DAMAGES; AND

(b) EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY CUSTOMER DURING THE SIX MONTHS BEFORE THE EVENT GIVING RISE TO LIABILITY.

**13.2 Exceptions to Limitations.** NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) OBLIGATIONS UNDER SECTION 12 (DEFENSE AND INDEMNITY); (D) INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (E) PAYMENT OBLIGATIONS; OR (F) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## 14. Miscellaneous

**14.1 Notices.** Del Systems may provide any notice to Customer under this Agreement by: (a) sending an email to Notification Email Address or by (b) posting a notice in the Admin Console. Customer may provide notice to Del Systems under this Agreement by sending an email to Del Systems's legal department at legal@delsystems.net. Notice will be treated as received when (x) the email is sent, whether or not the other party has received the email or (y) notice is posted in the Admin Console.

**14.2 Assignment.** Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

**14.3 Change of Control.** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

**14.4 Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

**14.5 No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.

**14.6 Severability.** If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

**14.7 No Agency.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

**14.8 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**14.9 Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.

14.10 **Governing Law.** This Agreement is governed by FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SERBIA.

14.11 **Amendments.** Any amendment must be in writing and expressly state that it is amending this Agreement.

14.12 **Survival.** The following sections will survive expiration or termination of this Agreement: Section 3, 6, 7.1, 11.2, 12, 13, 14 and 15.

14.13 **Entire Agreement.** This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.

14.14 **Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Order Form, the Agreement, and the terms located at any URL.

14.15 **Counterparts.** The parties may enter into this Agreement by executing the applicable Order Form, which may be executed in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

## 15. Definitions.

"**Acceptable Use Policy**" means the acceptable use policy for the Services available at <https://www.ocamba.com/legal/acceptable-use-policy.htm> or such other URL as may be provided by Del Systems.

"**Account**" means Customer's Ocamba account credentials and correlating access to the Services under this Agreement.

"**Account Manager**" means the Del Systems business person working with Customer regarding Customer's purchase of the Services.

"**Additional Products**" means products, services and applications that are not part of the Services but that may be accessible, via the Admin Console or otherwise, for use with the Services.

"**Additional Product Terms**" means the then-current terms at <https://www.ocamba.com/legal/terms-aditional.htm> or other such URL as Del Systems may provide.

"**Admin Account(s)**" means the administrative account(s) provided to Customer by Del Systems for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which Del Systems will provide to Customer.

"**Admin Console**" means the online tool provided by Del Systems to Customer for use in reporting and certain other administration functions.

"**Administrators**" mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

"**Brand Features**" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand

features of each party, respectively, as secured by such party from time to time.

"**Confidential Information**" means information that one party (or Affiliate) discloses to the other party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is Customer's Confidential Information.

"**Core Services**" means the Core Services for Ocamba Suite as described in the Services Summary.

"**Customer Data**" means data, including email, provided, generated, transmitted or displayed via the Services by Customer or End Users.

"**Customer Domain Names**" mean the domain names owned or controlled by Customer, which will be used in connection with the Services and specified in the Order Form.

"**Emergency Security Issue**" means either: (a) Customer's or End Users' use of the Services in violation of the Acceptable Use Policy, in a way that disrupts: (i) the Services; (ii) other customers' use of the Services; or (iii) the Del Systems network or servers used to provide the Services; or (b) to prevent unauthorized third party access to the Services or data within the Services.

"**End Users**" means the individuals Customer permits to use the Services.

"**End User Account**" means a Ocamba-hosted account established by Customer through the Services for an End User.

"**Export Control Laws**" means all applicable export and reexport control laws and regulations, including trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State, but excluding the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce.

"**Fees**" means the amounts invoiced to Customer by Del Systems, or Reseller, if applicable, for the Services as described in an Order Form.

"**Help Center**" means the Del Systems help center accessible at [href="https://www.ocamba.com/support/](https://www.ocamba.com/support/), or other such URL as Del Systems may provide.

"**High Risk Activities**" means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.

"**Indemnified Liabilities**" means any (i) settlement amounts approved by the indemnifying party; and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

"**Initial Term**" means the term for the applicable Services beginning on the Service Commencement Date and continuing for the duration set forth on the Order Form.

**"Intellectual Property Rights"** means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

**"Legal Process"** means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

**"Liability"** means any liability, whether under contract, tort, or otherwise, including for negligence.

**"Notification Email Address"** means the email address(es) designated by Customer in the Admin Console to receive certain notifications from Del Systems. It is Customer's responsibility to keep the Notification Email Address(es) valid and current.

**"Order Form"** means the online order page or pages, or other ordering document acceptable to Del Systems under this Agreement, that Customer completes when signing up and specifies the Services Del Systems will provide to Customer under the Agreement, and which may include: (i) applicable billing and renewal terms; (ii) Fees; (iii) number of, and Initial Services Term for, End User Accounts; (iv) the applicable form of payment; and (v) Customer Domain Names.

**"Other Services"** means the "Other Services for Ocamba Suite" as described in the Services Summary.

**"Purchase Order"** means a Customer issued purchase order.

**"Reseller"** means, if applicable, the authorized third party reseller that sells or supplies the Services to Customer.

**"Reseller Agreement"** means the separate agreement between Customer and Reseller regarding the Services. The Reseller Agreement is independent of and outside the scope of this Agreement.

**"Service Commencement Date"** is the date upon which Del Systems makes the Services available to Customer, and will be within one week of Del Systems's receipt of the applicable Order Form signed by Customer, unless otherwise agreed by the parties.

**"Service Pages"** mean the web pages displaying the Services to End Users.

**"Service Specific Terms"** means the terms specific to one or more Services at: <https://www.ocamba.com/legal/terms-apps.htm>.

**"Services"** means the applicable Core Services and Other Services provided by Del Systems and used by Customer under this Agreement.

**"Services Summary"** means the description of the Services, and related editions, as described here: <https://www.ocamba.com/legal/service-features.htm>, or such other URL as Del Systems may provide.

**"Significant Deprecation"** means to discontinue or to make backwards incompatible changes to the Core Services that results in Del Systems no longer providing to its enterprise-customer base the ability to: (1) to send and receive e-mail messages; (2) schedule and manage events; (3) create, share, store and sync files; (4) communicate with other end users in real time; or (5) search, archive, and export email messages.

**"SLA"** means the Service Level Agreement located here: <https://www.ocamba.com/legal/sla.htm>, or such other URL as Del Systems may provide.

**"Suspend"** means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

**"Taxes"** means any duties, customs fees, or taxes (other than Del Systems's income tax), including indirect taxes such as "goods and services tax" and "value-added tax," associated with the sale of the Services, including any related penalties or interest.

**"Term"** means the Initial Term and all renewal terms for the applicable Services.

**"Third-Party Legal Proceeding"** means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

**"TSS"** means the technical support services provided by Del Systems to the Administrators under the TSS Guidelines.

**"TSS Guidelines"** means Del Systems's technical support services guidelines then in effect for the Services. TSS Guidelines are at the following URL: <https://www.ocamba.com/legal/terms.htm> or such other URL as Del Systems may provide.

**"URL Terms"** means the Acceptable Use Policy, Service Specific Terms, the SLA, and the TSS Guidelines.

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